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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

SENTINEL GLOBAL PRODUCT
SOLUTIONS, INC.,

Plaintiff and Appellant,

v.

HYDROFARM, INC.,

Defendant and Respondent.

A149017

(Sonoma County
Super. Ct. No. SCV-254184)

Plaintiff Sentinel Global Product Solutions, Inc. (Sentinel) sold the products of a Chinese company, Xiamen Superpro Technology Company, Ltd. (Superpro), to, among others, defendant Hydrofarm, Inc. (Hydrofarm). Sentinel claims it had an agreement with Superpro that it would be Superpro's exclusive distributor in the United States.

When Hydrofarm began purchasing products directly from Superpro, rather than Sentinel, Sentinel sued Hydrofarm for tortious interference with contract, tortious interference with prospective economic advantage, and unfair competition. The trial court granted Hydrofarm's motion for summary judgment. We affirm.

BACKGROUND

In 2005, Gregory Moore, Keith Harrington and Russell Winnett agreed to form Sentinel to sell products used in hydroponic gardening.¹

¹ Moore is the "President and co-founder" of Sentinel. Harrington and Winnett are defendants in the underlying action. Harrington "quit as a partner of Sentinel" in

Harrington and Winnett subsequently met with two Chinese citizens, Xu Liqiang (Xu) and Lin Yaoliang (Lin), to discuss the manufacturing of a component to be used in hydroponic indoor gardening. Xu and Lin agreed to design and manufacture the component. Harrington suggested Xu and Lin form a manufacturing company, which they did, creating Superpro.

In 2006, Harrington and Moore, as “legal representative[s]” of Interplas LLC and Redwood Imports LLC, respectively, signed a joint venture agreement with Xiamen Kunlun Technology Co., Ltd. (Xiamen), “co-invested by [Xu] and [Lin].” The agreement, entitled “Contract of a Chinese-Foreign Equity Joint Venture,” provided that the parties would “set up a joint venture limited liability company in the PRC [(People’s Republic of China)] (hereinafter referred to as the ‘JVC’), named as Superpro Automation Technology Co. Ltd.”

The agreement specified, “The establishment of the JVC shall start from the date on which the business license of the JVC is issued.” It further provided, “This contract shall come into force with effect from the date of approval by the examination and approval of Huli District Foreign Investment Bureau.” The agreement also stated, “The formation of this contract, its validity, interpretation, execution, amendment, termination and settlement of disputes shall be governed by the laws of the PRC.” “All activities of the JVC shall be governed by the laws, decrees and relevant rules and regulations of the PRC and the JVC shall be subject to the jurisdiction and protection of PRC laws.” Xiamen was responsible for “[a]ssisting in handling applications for approval, registration and other matters for the establishment of the JVC in the PRC.”

Thus, it was not disputed that “[t]he [a]lleged JVA specified clearly that approval by the Chinese government was required before the venture would be valid and enforceable, and that Chinese law would govern the agreement.”

2009, while Winnett sold his interest in 2011. Superpro, the Chinese manufacturing company, was not named as a defendant.

Three years later, in 2009, Sentinel and Superpro executed a “Letter of Intent for the Joint Venture: Superpro Electronic (Xiamen) Co. Ltd.” The letter provided “both parties agree to establish Superpro Electronic (Xiamen) Co., Ltd . . . subject to the terms and conditions as stipulated hereinafter.” It also provided Sentinel “can sell products in their territory to North America, South America, Europe, UK, New Zealand, Australia and Africa,” while “Superpro can sell products within their territory. Asia includes China, Japan, Vietnam, Philippines etc.”

In 2011, Moore purchased Winnett’s interest in Sentinel. The purchase agreement provided, among other things, that Winnett “agrees and covenants that for a period of five years . . . after the Effective Date, he shall not, nor on behalf of any other person or entity, directly or indirectly . . . (ii) interfere with or disrupt, or attempt to interfere with or disrupt, the relationship, contractual or otherwise, between [Sentinel] and any customer, supplier, partner or employee of [Sentinel].” Apparently, Winnett commenced working, on a commission basis, for Superpro, and subsequently went to work for Growop Technology, Ltd. (Growop), a California corporation. He is the only named defendant in a fourth cause of action for breach of contract, which alleges Winnett breached the buyout agreement “by accepting employment with Growop.”

In August 2012, Superpro began selling products directly to Hydrofarm and Worm’s Way, another defendant who is not a party to this appeal. Hydrofarm and Worm’s Way then stopped purchasing products from Sentinel.

The court granted summary judgment in favor of Hydrofarm and Worm’s Way.²

DISCUSSION

Standard of Review

The standard of review on appeal from a summary judgment is de novo. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 860 (*Aguilar*); *Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 334.) In general, summary judgment: “shall be granted if . . .

² Although Sentinel’s notice of appeal states it has appealed from the judgment, in its briefing Sentinel asks only that this court “vacate the Judgment issued in favor of Hydrofarm.”

there is no triable issue as to any material fact. . . . In determining if the papers show that there is no triable issue as to any material fact, the court shall consider all of the evidence set forth in the papers . . . and all inferences reasonably deducible from the evidence . . . [unless] contradicted by other inferences or evidence that raise a triable issue as to any material fact.” (Code Civ. Proc., § 437c, subd. (c).)

The moving party bears the burden of showing, to a degree equal to the standard of proof at trial, that there is no issue of material fact on any cause of action; if the moving party succeeds, then the opposing party bears the burden of presenting competent evidence raising an issue of material fact. (*Aguilar, supra*, 25 Cal.4th at p. 845; see Code Civ. Proc., § 437c, subd. (p)(2).) We “determine with respect to each cause of action whether the defendant seeking summary judgment has conclusively negated a necessary element of the plaintiff’s case, or has demonstrated that under no hypothesis is there a material issue of fact that requires the process of trial, such that the defendant is entitled to judgment as a matter of law.” (*Guz v. Bechtel National, Inc., supra*, 24 Cal.4th at p. 334.)

Cause of Action for Intentional Interference with Contract

The elements of a cause of action for intentional interference with contractual relations are: “(1) a valid contract between plaintiff and a third party; (2) defendant’s knowledge of this contract; (3) defendant’s intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage.” (*Pacific Gas & Electric Co. v. Bear Stearns & Co.* (1990) 50 Cal.3d 1118, 1126.)

“In its simplest terms, to be liable for inducing breach of contract, there must be a valid contract.” (*PMC, Inc. v. Saban Entertainment, Inc.* (1996) 45 Cal.App.4th 579, 595 (*PMC*), disapproved on another ground by *Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134 (*Korea Supply*).) “It is logical to force the plaintiff to plead and prove an enforceable contract when stating a cause of action for intentional interference with contract. If a party is not obligated to perform a contract and may refuse to do so at his election without penalty, then the other party to that agreement enjoys nothing more

than an expectancy.” (*PMC*, at p. 599.) *PMC* held that “a cause of action for intentional interference with contract requires an underlying enforceable contract. Where there is no existing, enforceable contract, only a claim for interference with prospective advantage may be pleaded. To [conclude] otherwise unnecessarily confuses the two torts and fails to recognize their inherent differences.” (*Id.* at p. 601, italics omitted.)

“*PMC*’s recognition of the inherent differences between the two interference torts was based in large part on the discussion of those differences in *Della Penna v. Toyota Motor Sales, U.S.A., Inc.* (1995) 11 Cal.4th 376 [(*Della Penna*)]. . . . *Della Penna* addressed ‘the need to draw and enforce a sharpened distinction between claims for tortious disruption of an existing contract and claims that a prospective contractual or economic relationship has been interfered with by the defendant.’ [Citation.]

Emphasizing that the two torts are analytically different, *Della Penna* stated: [¶] ‘The courts provide a damage remedy against third party conduct intended to disrupt an existing contract precisely because the exchange of promises resulting in such a formally cemented economic relationship is deemed worthy of protection from interference by a stranger to the agreement. Economic relationships short of contractual, however, should stand on a different legal footing as far as the potential for tort liability is reckoned. Because ours is a culture firmly wedded to the social rewards of commercial contests, the law usually takes care to draw lines of legal liability in a way that maximizes areas of competition free of legal penalties.’ ” (*Bed, Bath & Beyond of La Jolla, Inc. v. La Jolla Village Square Venture Partners* (1997) 52 Cal.App.4th 867, 878 (*Bed, Bath & Beyond*), italics omitted.)

Bed, Bath and Beyond agreed with “*PMC*’s analysis and conclusion that a cause of action for intentional interference with contractual relations requires an underlying enforceable contract, and where the underlying contract is unenforceable, only a claim for interference with prospective economic advantage lies. We believe this rule is a proper extension of the California Supreme Court’s admonition that courts should not blur the analytical line between the two interference torts and its recognition that the ‘formally cemented economic relationship’ created by an ‘existing contract’ is entitled to greater

solicitude than a relationship falling short of that.” (*Bed, Bath & Beyond, supra*, 52 Cal.App.4th at p. 879, italics omitted.)

No Triable Issue of an Enforceable Contract

As to the first element of a contractual interference claim, it is undisputed that neither the joint venture agreement nor the letter of intent were ever approved by the Chinese government, as required under Chinese law and the terms of the joint venture agreement.

Sentinel claims, however, that “[t]he mere fact that the [joint venture agreement] was not completed under Chinese law, or that the 2009 [letter of intent] was pending at the time of the 2011-12 interference by Hydrofarm did not preclude the trial court from finding a valid and enforceable contract.” Relying on *Golden v. Anderson* (1967) 256 Cal.App.2d 714, 719 Sentinel maintains “ ‘[c]ontracts which are voidable by reason of the statute of frauds, formal defects, lack of consideration, lack of mutuality, or even uncertainty of term, still afford a basis for a tort action when the defendant interferes with their performance.’ ”

Golden, however, was decided before cases drew “a clear distinction between tort liability for interference with a contract and tort liability for interference with prospective economic advantage.” (*Bed, Bath & Beyond, supra*, 52 Cal.App.4th at p. 880, fn. 9.) Prior to the California Supreme Court’s holding in *Della Penna*, the distinction between those two causes of action was “blurred in California case law.” (*Bed, Bath & Beyond*, at p. 880, fn. 9.) As *Bed, Bath & Beyond* explained, “[t]he rule we adopt from *PMC* is not inconsistent with [*Golden*], as it does not preclude imposition of tort liability for interference with an unenforceable contract; it merely limits the scope of such liability to a claim for interference with prospective economic advantage.” (*Ibid.*)

Accordingly, there is no merit to Sentinel’s claim that it can maintain a cause of action for contractual interference in the absence of an enforceable contract.

No Triable Issue of Actual Knowledge

As to the second element of a contractual interference claim, Sentinel failed to raise a triable issue that Hydrofarm “had actual knowledge that [Sentinel] had or claimed

to have an exclusive North American distributorship with Superpro.” Indeed, Sentinel concedes that even the letter of intent, which it claims was the “operative agreement,” “does not specifically state that the sales and distribution rights are exclusive to Sentinel.”

Sentinel asserts, however, that the “actual knowledge” requirement does not require that Hydrofarm “be aware of . . . the specific terms of the contract, including whether Sentinel had exclusive distribution rights.” Sentinel is mistaken. Hydrofarm could not intentionally interfere with an alleged exclusive distributorship agreement if it did not know such an agreement existed. (See *Pacific Gas & Electric Co. v. Bear Stearns & Co.*, *supra*, 50 Cal.3d at p. 1126; *Ramona Manor Convalescent Hospital v. Care Enterprises* (1986) 177 Cal.App.3d 1120, 1130 [“ ‘If the actor had no knowledge of the existence of the contract or his actions were not intended to induce a breach, he cannot be held liable. . . .’ ” Italics omitted.].)

Apparently acknowledging the lack of evidence that Hydrofarm had any actual knowledge of the purported exclusive distributor agreement, Sentinel additionally asserts that former co-owner Winnett’s knowledge “of the contractual agreements and relations was legally imputed to Hydrofarm.” This is so, Sentinel claims, because Winnett was acting as *Hydrofarm’s* agent in facilitating sales between Superpro (for whom Winnett was working) to Hydrofarm.

In an agency relationship, “ ‘ (1) An agent or apparent agent holds a power to alter the legal relations between the principal and third persons and between the principal and himself; (2) an agent is a fiduciary with respect to matters within the scope of the agency; and (3) a principal has the right to control the conduct of the agent with respect to matters entrusted to him.’ ” (Garlock Sealing Technologies, LLC v. NAK Sealing Technologies Corp. (2007) 148 Cal.App.4th 937, 964.)

Sentinel points to no evidence of any of these attributes as between Winnett and Hydrofarm. Specifically, there is no evidence Winnett was empowered to alter Hydrofarm’s legal relations or that he was a fiduciary of Hydrofarm. On the contrary, as Sentinel asserts, and the evidence shows, Winnett was working for Superpro and “had a written agreement to be paid sales commissions by Superpro on sales to Hydrofarm.”

Furthermore, Winnett’s knowledge, as a former co-owner of Sentinel, of any agreements between Sentinel and Superpro would include, as Sentinel concedes, that the “operative agreement” “does not specifically state that the sales and distribution rights are exclusive to Sentinel.”

Accordingly, Sentinel failed to meet its burden to raise a triable issue as to the requisite elements of a cause of action for intentional interference with contractual relations.

Cause of Action for Interference with Prospective Economic Advantage

“Intentional interference with prospective economic advantage has five elements: (1) the existence, between the plaintiff and some third party, of an economic relationship that contains the probability of future economic benefit to the plaintiff; (2) the defendant’s knowledge of the relationship; (3) intentionally wrongful acts designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic harm proximately caused by the defendant’s action.” (*Roy Allan Slurry Seal, Inc. v. American Asphalt South, Inc.* (2017) 2 Cal.5th 505, 512.)

“The tort of interference with prospective economic advantage protects the same interest in stable economic relationships as does the tort of interference with contract, though interference with prospective advantage does not require proof of a legally binding contract. [Citation.] The chief practical distinction between interference with contract and interference with prospective economic advantage is that a broader range of privilege to interfere is recognized when the relationship or economic advantage interfered with is only prospective.” (*Pacific Gas & Electric Co. v. Bear Stearns & Co.*, *supra*, 50 Cal.3d at p. 1126, fn. omitted.)

“[A] plaintiff seeking to recover for alleged interference with prospective economic relations has the burden of pleading and proving that the defendant’s interference was wrongful ‘by some measure beyond the fact of the interference itself.’ ” (*Della Penna, supra*, 11 Cal.4th at pp. 392–393.) “[A]fter *Della Penna* the elements of the tort of interference with prospective economic advantage remain the same, except that the third element also requires a plaintiff to plead intentional wrongful acts on the part of

the defendant designed to disrupt the relationship.” (*Korea Supply, supra*, 29 Cal.4th at p. 1154, italics omitted.) “California has required plaintiffs to show that a defendant has engaged in an independently, or inherently, wrongful act.” (*Id.* at p. 1161.)

“[W]hile intentionally interfering with an existing contract is ‘a wrong in and of itself’ [citation], intentionally interfering with a plaintiff’s prospective economic advantage is not. . . . An act is not independently wrongful merely because defendant acted with an improper motive. As we said in *Della Penna*, ‘the law usually takes care to draw lines of legal liability in a way that maximizes areas of competition free of legal penalties.’ (*Della Penna, supra*, 11 Cal.4th at p. 392.) The tort of intentional interference with prospective economic advantage is not intended to punish individuals or commercial entities for their choice of commercial relationships or their pursuit of commercial objectives, unless their interference amounts to independently actionable conduct. [Citation.] We conclude, therefore, that an act is independently wrongful if it is unlawful, that is, if it is proscribed by some constitutional, statutory, regulatory, common law, or other determinable legal standard.” (*Korea Supply, supra*, 29 Cal.4th at pp. 1158–1159.)

Sentinel claims Hydrofarm’s alleged independent wrongful conduct was “tacitly inducing Russ Winnett to materially breach the non-[interference] clause of his [buy-out] agreement with Sentinel.” Hydrofarm did this, Sentinel asserts, by “encourag[ing] [Winnett’s] efforts to secure Superpro as a supplier to Hydrofarm.” But Sentinel does not identify any evidence that Hydrofarm knew of the non-interference clause in the buy-out agreement between Winnett and Sentinel. Nor does Sentinel identify any facts evidencing a “tacit” inducement to breach the Winnett/Sentinel agreement. Indeed, in its cause of action against Winnett for breach of the non-interference clause, Sentinel alleges he did so by accepting employment with Growop, not by attempting to “secure Superpro as a supplier to Hydrofarm.”

Thus, as the trial court concluded, Sentinel failed to produce evidence “showing that [Hydrofarm] engaged in any independently wrongful conduct beyond the alleged

interference” and thus failed to raise a triable issue as to a material element of a cause of action for tortious interference with prospective economic advantage.

Cause of Action for Unfair Competition

In its third cause of action for unfair competition under Business and Professions Code section 17200, Sentinel alleged Hydrofarm “unfairly utilized information obtained through their role as distributors of [Sentinel’s] products to sell almost identical products without the cost of research, design and development and creation of a factory equipped to manufacture the products.” Sentinel specifically claims there is a triable issue as to “whether Hydrofarm unfairly took advantage of the industry and efforts of Sentinel by using and employing confidential information regarding the manufacture of the hydroponic products sold by Sentinel, copying the designs and appearance of the products, and then thereafter directly competing with Sentinel after illicitly obtaining access to Superpro’s engineers.”

“ ‘Because Business and Professions Code section 17200 is written in the disjunctive, it establishes three varieties of unfair competition—acts or practices which are unlawful, or unfair, or fraudulent. “In other words, a practice is prohibited as ‘unfair’ or ‘deceptive’ even if not ‘unlawful’ and vice versa.” ’ ” (*Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.* (1999) 20 Cal.4th 163, 180 (*Cel-Tech*).)

“Although the unfair competition law’s scope is sweeping, it is not unlimited. Courts may not simply impose their own notions of the day as to what is fair or unfair.” (*Cel-Tech, supra*, 20 Cal.4th at p. 182.) *Cel-Tech* noted, “A few Courts of Appeal have attempted a definition. (E.g., *People v. Casa Blanca Convalescent Homes, Inc.* (1984) 159 Cal.App.3d 509, 530. . . . [‘[A]n “unfair” business practice occurs when it offends an established public policy or when the practice is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers.’]; *State Farm Fire & Casualty Co. v. Superior Court* [(1996)] 45 Cal.App.4th [1093,] 1104 [‘ “the court must weigh the utility of the defendant’s conduct against the gravity of the harm to the alleged victim” ’].)” (*Cel-Tech*, at p. 184.)

Cel-Tech concluded earlier attempts to define “unfairness” resulted in “definitions [that] are too amorphous and provide too little guidance to courts and businesses.” (*Cel-Tech, supra*, 20 Cal.4th at p. 185.) It explained: “any finding of unfairness to competitors under [Business and Professions Code] section 17200 [must] be tethered to some legislatively declared policy or proof of some actual or threatened impact on competition. We thus adopt the following test: When a plaintiff who claims to have suffered injury from a direct competitor’s ‘unfair’ act or practice invokes [Business and Professions Code] section 17200, the word ‘unfair’ in that section means conduct that threatens an incipient violation of an antitrust law, or violates the policy or spirit of one of those laws because its effects are comparable to or the same as a violation of the law, or otherwise significantly threatens or harms competition.” (*Cel-Tech*, at pp. 186–187.)

As the trial court ruled, Sentinel’s operative complaint “fail[ed] to allege a single unlawful act.” While the complaint “alludes to possible trademark violations, or trade secret, or trade dress issues . . . it alleges no violation of any statute.”

Apparently recognizing this, Sentinel asserts in its briefing on appeal only “unfairness” by Hydrofarm. Sentinel claims this alleged unfairness took the form of taking “advantage of the industry and efforts of Sentinel,” “using and employing confidential information,” “copying the designs and appearance of the products,” and “directly competing with Sentinel.”

Sentinel, however, failed to meet its burden of presenting competent evidence raising an issue of material fact in this regard. (*Aguilar, supra*, 25 Cal.4th at p. 845.) There is no evidence Hydrofarm was a manufacturer of the products at issue, rather than simply a buyer. Sentinel’s brief does not identify what allegedly “confidential information” Hydrofarm used. The complaint alleges only that Hydrofarm “unfairly utilized information obtained through [its] role as distributor[] of [Sentinel’s] products.” And, even assuming Hydrofarm’s purchase of products directly from Superpro made it a direct competitor of Sentinel, direct competition itself is not illegal or unfair. Indeed, the Unfair Competition Law seeks to protect “ ‘fair competition in commercial markets for goods and services.’ ” (*Kwikset Corp. v. Superior Court* (2011) 51 Cal.4th 310, 320.) As

Sentinel itself acknowledged, “[i]njury to a competitor is not equivalent to injury to competition. . . . [(*Cel-Tech* []], *supra*, 20 Cal.4th at [p.] 186.[)]”

Evidentiary Objection to Declaration of Xu Liqiang

Sentinel also claims the trial court erred in overruling its objection to the declaration of Xu, a founder of Superpro, because Hydrofarm “failed to submit a translator’s declaration.” Xu’s declaration, which was properly sworn, was in English. However, the declaration recited, among other things, that prior to signing the declaration, Xu had reviewed a Chinese translation.

We review a trial court’s evidentiary ruling for abuse of discretion. (*People v. McCurdy* (2014) 59 Cal.4th 1063, 1095.)

Sentinel claims Evidence Code sections 750, 751, subdivision (a) and 752, subdivision (a) required that a translator’s declaration be filed in conjunction with Xu’s declaration. Evidence Code section 750 provides: “A person who serves as an interpreter or translator in any action is subject to all the rules of law relating to witnesses.” Evidence Code section 751 provides, in part: “A translator shall take an oath that he or she will make a true translation in the English language of any writing he or she is to decipher or translate.” (Evid. Code, § 751, subd. (c).) Evidence Code section 753 provides, in turn, that: “When the written characters in a writing offered in evidence are incapable of being deciphered or understood directly, a translator who can decipher the characters or understand the language shall be sworn to decipher or translate the writing.” (Evid. Code, § 753, subd. (a).)

It is unclear whether these statutory provisions even apply to Xu’s declaration, given that the document submitted to the court was in English and in no need of translation.

But even if Xu’s English declaration was subject to the Evidence Code “oath” requirements, counsel for co-defendant Worm’s Way submitted a declaration that she retained TransPerfect Translations, Inc. to translate Xu’s declaration from English to Chinese for his review. As an exhibit to her declaration, counsel attached a “certification” by an employee of TransPerfect Translations, Inc. certifying that the

English to Chinese translation was “produced . . . according to our . . . certified quality management system, and has been validated and judged to be a true and accurate translation.” This certification was “[s]worn to before” an Illinois notary public. Sentinel then filed “Amended Evidentiary Objections” to Xu’s declaration, addressing the translation issues. Hydrofarm filed a declaration of the same TransPerfect Translations employee, made under California law, in which she reaffirmed that the translation was true and accurate.

Sentinel maintains, however, that the trial court “did not consider the Translator’s Certification.” This is so, it claims, because the court stated in its order granting summary judgment that “ ‘This ruling does not consider any of the new evidence submitted with the reply,’ ” and the certification was submitted with the reply. But that is not a fair reading of the trial court’s order. Rather, read in the context of all the parties’ submissions, it is apparent the court was not referring to the translator’s certification, but to the “large volume of new evidence” proffered by the parties, “none of which is included in their original Separate Statement.”

We, thus, conclude that on this record, the trial court did not abuse its discretion in overruling Sentinel’s objection to Xu’s declaration.

DISPOSITION

The judgment is affirmed. Costs on appeal to respondent.

Banke, J.

We concur:

Humes, P.J.

Margulies, J.

A149017, *Sentinel Global Product Solutions, Inc. v. Hydrofarm, Inc.*